UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1624
3 February 1998

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Sixty-first session

SUMMARY RECORD OF THE 1624th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 October 1997, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. BHAGWATI

later: Ms. CHANET

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Jamaica (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.97-18819 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Jamaica (CCPR/C/42/Add.15; HRI/CORE/1/Add.82; CCPR/C/61/JAM/4) (continued)

1. The CHAIRPERSON said that the delegation of Jamaica would continue to reply to the questions asked orally by members of the Committee.

2. Mr. RATTRAY (Jamaica), addressing the questions on discrimination, said he had already referred to the measures planned within the framework of the constitutional reform, which would expressly abolish all discrimination on grounds of sex. As to the case of Jamaican women married to foreigners, thanks to a 1993 amendment of the law, the foreign husband of a Jamaican woman could acquire Jamaican nationality.

3. Mr. Lallah had asked whether the appeals procedure before the Judicial Division of the United Kingdom Privy Council could not be shortened. The Jamaican authorities had communicated their concerns in that regard, and the Judicial Division was fully aware of the problem. Mr. Lallah had contested the argument that Jamaican law authorized flogging because it was a traditional or cultural practice. In fact, the Jamaican Constitution contained two provisions that preserved methods or measures which had been considered legitimate or legal prior to independence: section 26 (8) and section 17 (2). Within the framework of the Constitutional Reform Commission, it had been agreed to delete those provisions. Consequently, it could no longer be argued that flogging was a form of punishment that had existed prior to independence and that it had been maintained for that reason. The question remained as to whether it constituted an inhuman form of punishment, and that would be for the courts to determine. Opinions were very divided on that point, especially as concerned juvenile offenders. In any event, the opinions expressed by the members of the Committee would be duly taken into consideration.

4. With regard to life sentences, it had been asked how many years the inmate had to serve before being eligible for parole. Generally, the case files of all persons serving life sentences were reviewed from time to time, and that review usually occurred every seven years, unless otherwise warranted by particular circumstances, such as state of health. It could also happen that in handing down the sentence, the judge had set a minimum prison term to be served before the inmate could be granted parole, under a provision that had been in force since the amendment of the law that had divided the offence of murder into capital and non-capital categories.

5. As to coroner's inquests, they were normally undertaken when a person died in prison or when there was an unnatural death. When, on the other hand, criminal proceedings had been initiated and a person was charged, there was no reason to undertake such an inquest.

6. To the question whether Jamaica planned to abolish corporal punishment he replied that the debate on the subject was very heated; the matter came within the competence of the Legal Reform Committee.

7. Mr. PRESCOT (Jamaica), replying to questions about whether inmates could be compelled to work in prison, said that a person sentenced to forced labour would obviously be put to work by the prison authorities. However, the Correctional Institutional Rules forbade any form of employment of prisoners in the service of or for a private individual. That being the case, the Jamaican authorities considered productive work as a means of readaptation and reintegration of prisoners. For that reason they urged and encouraged them to work, on the basis of any occupational skills they might possess. Clearly, if a prisoner refused to work, he would not be forced to. Under the Prisoners' Rules, it was desirable for each prisoner to work at least six hours a day outside his cell, but that was not always possible for various reasons, including security reasons in particular. However, the prison authorities did their utmost to ensure that prisoners remained outside their cells for as long as possible every day.

8. In reply to the questions asked about inspections of detention centres, as Commissioner of Corrections he said that lock-ups did not come under his competence. Prisons were, however, regularly inspected by visiting committees, which were completely independent and composed of private individuals, and reported directly to the Minister. The Minister transmitted those reports to the Commissioner of Corrections, (Mr. Prescot) with a request for his comments. He sometimes met with the visiting committees following their visits, so that they could inform him of any problems they had encountered. That procedure formed part of the applicable rules, which were rigorously observed and could be sent to members of the Human Rights Committee in due course.

9. Mr. RATTRAY (Jamaica), giving a historical overview in reply to questions about whether Jamaica planned to abolish the death penalty, said that possibility had been considered in 1980. It had even been the subject of a straw poll in the House of Representatives and the Senate, with the former opposed to abolition and the latter in favour. It was then that the Government had decided to review all death row cases in order to determine whether some of those sentences could be commuted, which had led to a somewhat lengthy de facto moratorium. After the change of government, death sentences had been reintroduced and, in 1992, the law had been amended to establish the distinction between capital and non-capital murders. The issue of abolition had not resurfaced, however, as the climate was not conducive and public opinion was not at all in favour. While the overall crime rate had dropped, the number of cases of intentional homicide had actually increased. So that was the situation with regard to abolition of the death penalty.

10. A question had been asked about the extent to which Jamaica was taking action on the Committee's recommendations concerning communications under the Optional Protocol. It was a fact that many of those whose death sentences had been commuted had been the subject of a Committee recommendation, as members could see from the following list of prisoners whose death sentences had been commuted to life imprisonment: Earl Pratt, Ivan Morgan, Paul Kelly, Carlton Reid, Victor Francis, Lenford Hamilton, Lloyd Grant, Anthony Currie,

Frank Robinson, John Campbell, George Reid, Leaford Smith, Albert Berry, Clifton Wright, Trevor Collins, Paul Anthony Kelly, Raphael Henry, Lynden Champagnie et al. That phenomenon had coincided with new definitions of murders based on whether or not they were punishable by the death penalty, and the application of that legislation had reduced the number of prisoners on death row from 300 to 47. As to the Committee's recommendations, they were duly taken into consideration by the Jamaican authorities, who did not, however, consider them as legally binding obligations, but rather as "views", in accordance with the wording of the Optional Protocol. In fact, exercise of the right of pardon under the Constitution was a means of giving effect to the Committee's recommendations.

11. Mr. PRESCOT (Jamaica), summarizing what had been done to improve the situation in the prisons, said that Jamaica had spent millions of dollars on that work. For example, the work done in St. Catherine District Prison, in the adult correctional centre, in order to improve hygiene and security had cost more than $15 million. Compared with three or four years earlier, the overall situation had changed a great deal: there were flower gardens, the atmosphere was much pleasanter, and the standard of hygiene had clearly improved, thanks to the installation of a new sewage system and 10 new showers and toilets.

12. The correctional institutions had the services of two full-time doctors, a dentist and a psychiatrist, and prisoners could be admitted to the nearest hospital for treatment. The long-term objective was to have one doctor attached to each institution, which would be done once the Department of Correctional Services was able to incorporate its various institutions into the public health plan of the Ministry of Health. That would enable the doctors, nurses and equipment available in the various hospitals to be called upon, thereby reducing costs.

13. Prison cleanliness was an important aspect of the living conditions of prisoners; it required daily supervision of maintenance tasks and depended to a great extent on the attitude of the prison superintendent. He himself had had to remove superintendents who were not properly performing their duties in that regard. Every three months he visited each correctional institution, including those for juvenile offenders. In addition, prison inspections were conducted every Friday by the competent superintendent.

14. The difficulties encountered in ensuring cleanliness and the proper maintenance of prisons were linked to the great age of the buildings, some of which were about 200 years old, with windowless cells that had to be equipped with electric lighting. The budget allocated by Correctional Services to prison maintenance was close to $500 million. Clearly, once the prisons had satisfactory sanitary facilities, they could dispense with such traditional equipment as buckets for getting rid of waste water, and the work of the staff, which was currently very difficult, would be greatly facilitated. He was determined that progress should be made.

15. Mr. RATTRAY (Jamaica) said Mr. El Shafei's statement that the Jamaican Constitution did not expressly proclaim the freedom to leave one's own country was correct. Consequently, the Constitutional Reform Commission had expressly recommended that a provision should appear in the new draft legislation

specifying that each person was free to leave his country. As to the exception to the protection against discrimination during a state of emergency, new provisions would also deal with that matter, including within the framework of the constitutional reform.

16. Confessions obtained through coercion were not admissible as evidence once it was determined that a deposition or testimony had been obtained through coercion, it was not admissible as evidence, and it was the court which decided on the matter. In such cases, the Judges' Rules applied.

17. In reply to the questions asked about the incidents of August 1997 and the Tivoli Gardens incidents, in the first case, the inquiry had indeed been public and had been widely reported in the press. As to the Tivoli Gardens incidents, no inquiry had been conducted because the matter had been referred to the Director of Public Prosecutions in order that he might determine whether there were grounds for initiating proceedings. No public inquiry would be conducted until the Director of Public Prosecutions had rendered his decision, so as to avoid jeopardizing the principle of a fair trial by initiating proceedings. As to the number of cases in which the Police Complaints Authority had undertaken a direct inquiry, the reply would be furnished at a later stage in writing.

18. With regard to legal aid, a bill had been tabled which, among other reforms, was aimed at setting up a legal aid system to ensure the necessary facilities for preparing a defence and to guarantee that persons who could not afford the services of an attorney would be effectively represented in court. Those new measures should give court-appointed lawyers the necessary time and facilities to handle the cases entrusted to them. As to the right of the convicted person to comment on his plea for pardon, such persons were certainly entitled to make representations, but the law did not allow them to be heard directly by the Jamaican Privy Council.

19. As to the concern aroused among Committee members by Jamaica's announcement of its denunciation of the Optional Protocol, the question would obviously be brought to the attention of the Governor-General and duly considered, on the understanding that the announcement would in any event be without effect on the communications still before the Committee.

20. Mr. Bhagwati took the Chair.

21. Mr. PRESCOT (Jamaica) said he would reply to other questions that had been asked about prisoners. One member of the Committee had referred to prisoners' fears of speaking out about their grievances. When he had taken up his post as Commissioner of Corrections, he had found an unacceptable level of violence and cruelty in the prisons. On several occasions he had warned prison officials that if things did not change, those responsible for such treatment would lose their jobs; over 150 warders had in fact been dismissed for unprofessional conduct, which included unjustified recourse to violence. It was understandable that prisoners should be afraid to communicate their grievances, and at first, they had expressed complaints anonymously. Currently, however, letters were signed, sometimes by several prisoners who had collective grievances, indicating both the prison and cell number. Admittedly, in most cases, it was only after a complaint had been filed by a

prisoner that the Commissioner of Corrections learned what was going on in a prison. He used that information to find out more by questioning prison staff, and it was to be hoped that little by little staff would ensure that the normal procedure for handling internal complaints would be respected. Whenever he had learned that complaints had not reached him, he had ordered disciplinary measures to be taken. Clearly, it would never be possible to know everything, but the Department of Correctional Services was trying to change attitudes and behaviour. That effort would obviously take some time, but it was to be hoped that it would eventually bear fruit.

22. The normal procedure was the following: the complaint must first be addressed to the prison superintendent; over him there was an outside independent investigative body, called the Inspectorate, within the Ministry of Justice. The next stage was the Parliamentary Ombudsman. As to the procedure to be followed for a plea for pardon, it was explained to prisoners by the prison superintendent, the staff and the probation officer. The prisoner had to fill in a request form, for which he generally required the assistance of a staff member; the superintendent then filled in the relevant section of the form, which was sent to the Commissioner of Corrections, who sent it on to the Governor-General for consideration by the Jamaican Privy Council. With regard to prisoners' general awareness of their rights, regulations proclaiming their rights and obligations were posted in the prison lobby, printed in a brochure distributed to prisoners and read out to those who were unable to read.

23. As to internal discipline, flogging was not among the punishments that could be imposed by a prison superintendent on prisoners who contravened the regulations.

24. On the question of work in prison, prisoners received a wage of 15 Jamaican dollars for eight hours' work a day, which was paid to them every two weeks. Protective clothing, and boots for those working in the fields or marshy areas, were provided. To date, no injuries or work accidents had warranted the payment of compensation, although one case was still pending - that of a prisoner who had lost two toes while using an electric saw - and would perhaps result in compensation being paid.

25. Mr. RATTRAY (Jamaica) said he had been misunderstood when, in introducing the report, he had expressed the opinion that the Covenant represented minimum universal standards and that developing countries, including Jamaica, were not required to exceed those standards if they were not in a position to do so. He had not meant that the State should not do everything possible to go beyond that threshold and to improve the situation. On the contrary, just as he was convinced that the law should be interpreted within a constantly changing context, so he believed that the law and practice themselves must never remain immovable. He did, however, continue to think that a minimum threshold should be set for prison conditions - since that was what was at issue - and that only when a country did not attain that threshold should it be considered to have violated the Covenant.

26. One Committee member had asked whether complaints of police abuse had resulted in any action being taken. Complaints were filed daily against the police. Before turning cases over to the courts, the authorities always

attempted to settle the question at the administrative level. When that was not possible, the courts were brought in. He gave three examples of persons who had been arrested and detained, had challenged the legality of their arrest and had sued for damages. The first person had received J$ 60,000 in damages and J$ 30,000 for loss of income; the second had received J$ 50,000 in damages and J$ 1,000 for loss of income; and the third had received J$ 370,000 in general damages and J$ 70,000 for loss of income. Those were not isolated cases; the number of such complaints was high.

27. Another member of the Committee had asked how long it took for an arrested person to be brought before a judge. There were occasional delays between the time a person was arrested and the time he was brought before a judicial authority, but the law provided that if the person was not made available to the courts, he must be released on bail. Bail could be refused only for reasons relating to the circumstances of the alleged acts, or if there was a risk that the arrested person would fail to appear at his trial. In no circumstances was bail refused solely because the person did not have the necessary financial means. If bail was not granted, the person must immediately be brought before a justice of the peace. As to preventive detention, it was ordered only if the arrested person was charged with a felony or was a habitual criminal. An analogy could be drawn with the new provisions of the Offences Against the Person Act, under which a murder was punishable by death if the murderer had already been found guilty of another murder. Recidivism was a decisive factor in both cases.

28. After returning to Jamaica, his delegation would send the Committee written replies to the questions that had not been answered at the meetings.

29. Ms. MEDINA QUIROGA thanked the delegation for its many replies. However, she still had misgivings about protection against discrimination, as her concern had not pertained only to discrimination on grounds of sex. She wondered whether the Government intended to amend not only section 24 (3) of the Constitution, but also the other subsections calling for exceptions to protection against discrimination, namely subsections (4), (7) and (8). The issue was extremely important vis-à-vis the equality of children, who were subject to notable exceptions, as stated in paragraph 133 of the report. She again asked whether there were any plans to amend that section of the Constitution, which established discrimination in a manner incompatible with the Covenant.

30. She had inquired whether the law established an upper time limit for custody for juvenile offenders or whether that period was determined on a case-by-case basis. She had also wondered whether detention on suspicion had been eliminated, as had been done in the case of detention for vagrancy. And she had asked whether legal aid was now granted for filing a petition for a writ of habeas corpus.

31. Mr. KLEIN said there had been no reply to a question which particularly interested him and concerned the Flogging Regulation Act. Which authority was empowered to impose that penalty on a prisoner for having violated prison rules, and which law or regulation specified the nature of the violation punishable by such a measure?

32. Ms. EVATT thanked the delegation for the information it had provided but said there were two matters on which she was not totally reassured. First, while she was well aware that the law did not proclaim the right of attendance at proceedings for a person who had made a pardon plea, she had wondered whether the convicted person could consult the transcript of the file submitted to the authority responsible for deciding on the plea, which would, according to a principle of natural justice, enable him to reply, if necessary. Secondly, she had not understood the reply to the question she had raised about the absence of a coroner's inquest in connection with the Tivoli Gardens incidents, which in fact constituted just one of dozens of cases of deaths attributable to the security forces. She had understood from the Coroners Act that the only instance when it was possible for the coroner not to open an inquest was where the person had already been charged or where the coroner believed there was no reason to suspect that the violent death had been due to murder or homicide (in which case, he turned the case over to the Director of Public Prosecutions, who could demand an inquest or on the contrary endorse the coroner's decision). The situation should be clearly explained, both generally and in the specific case of the Tivoli Gardens incidents.

33. Mr. SCHEININ said that his question about police custody had concerned the time between the person's arrest and the time that person was taken before a justice of the peace. He wished to know whether there were any rules establishing the length of custody and, if so, how they were applied.

34. Mr. ZAKHIA asked whether non-governmental human rights organizations had the right to bring cases involving violations of fundamental rights before the courts.

35. Mr. YALDEN said he shared Ms. Medina Quiroga's concern at the provisions of the Constitution relating to protection against discrimination. Like Mr. Klein, he had observed that even if flogging was not imposed, it was allowed by law, which was contrary to the Standard Minimum Rules for the Treatment of Prisoners. He had also asked about the powers of the Parliamentary Ombudsman.

36. Mr. RATTRAY (Jamaica) said that, with regard to section 24 of the Constitution, the derogations, which were in fact very few in number, should be considered within their context. In no circumstances could the provisions of section 24, and of subsection (4) in particular, legitimize the discriminatory nature of a law under the Covenant. Section 24 did not sanction acts of discrimination in a manner incompatible with the Covenant, but simply stipulated that some laws could prescribe particular criteria. That was the case, for example, with legislation on military service, under which only Jamaican nationals performed national service. Other laws, particularly those governing eligibility to stand for Parliament or the right to vote, established such criteria as nationality or place of residence. The same was true in many countries, and those conditions were not discriminatory in themselves. That being the case, it was obviously important for the legislature to ensure that all bills were in conformity with the Covenant. Although discrimination on grounds of sex was not explicitly mentioned in section 24 (3) of the Constitution, that omission should be remedied in the text of the new Constitution.

37. As to the distinctions made between legitimate and illegitimate children, the status of illegitimacy had only relative importance in a society where many children were born out of wedlock. In any event, in order to reply to the question properly, the provisions of the Status of Children Act would have to be considered in detail.

38. As to the maximum duration of custody, the law did not establish a specific time limit, but stipulated that any person who was arrested must immediately be taken before a justice of the peace, who would decide whether he should be released on bail. Should the justice of the peace refuse, the person could be held in custody for eight days at the most, following which he must be brought before the court, which in turn could decide either to release him on bail or to keep him in custody. The duration of pre-trial detention could be relatively long in some cases, and complaints had been filed.

39. As to access to legal aid in filing for a writ of habeas corpus, such a possibility was not currently spelled out but should be under legislation which would be adopted shortly.

40. Mr. PRESCOT (Jamaica), replying to the question on the flogging of prisoners, said that that penalty must be expressly prescribed in the sentence. The authority responsible for that part of the penalty was the Superintendent.

41. Ms. Chanet resumed the Chair.

42. Mr. KLEIN said that certain matters were unclear. Under section 4 of the Flogging Regulations Act, a prisoner who violated a prison regulation or other regulation could be punished with flogging. That was apparently a disciplinary measure, which certainly did not depend on a court decision. Who, then, decided on the punishment? And who was responsible for its execution?

43. Mr. RATTRAY (Jamaica) said that the Act to which Mr. Klein had referred did not govern the procedures for enforcing the penalty. To be able to reply specifically, the pertinent texts would have to be examined in detail, but he did not have them to hand.

44. Mr. PRESCOT (Jamaica) said it should nonetheless be stressed that although flogging had not disappeared from the statute book, it had not been applied for several years already. When a prisoner violated the regulations, he was in principle deprived of one or more privileges for a given period of time (right to visits, exercise in the courtyard, etc.). Similarly, in the case of a minor, the law called for the superintendent to decide on the imposition of flogging, but that measure had not been carried out for some time. There again, the prisoner was temporarily deprived of certain privileges (right to watch television, take a course, etc.).

45. Mr. RATTRAY (Jamaica), in reply to the question whether convicted prisoners could consult the transcript of the file in connection with a pardon plea, said that to his knowledge that was not the case. The prisoner could furnish facts, but the pardon plea was not considered at an oral hearing.

Generally speaking, jurisprudence varied in such cases, and the issue of whether the prisoner should or should not be able to consult his file was the subject of lively debate in Jamaica.

46. A question had been asked about the coroner's inquest. In cases where an autopsy had been ordered and where, following the police investigation, someone had been arrested, the Director of Public Prosecutions could either indict him or call for an inquest. Given that such inquests were aimed at establishing responsibility, they were ordered only when the Director of Public Prosecutions did not issue any indictment.

47. In reply to the question on the rights of NGOs, he said they could refer matters to the Ministry of National Security and Justice, and to the Director of Public Prosecutions and police superintendents. Generally speaking, they were completely at liberty to take any action they deemed appropriate.

48. The powers of the Parliamentary Ombudsman were determined by a law under which the Ombudsman could be approached by anyone who believed he had been the victim of an injustice resulting from a measure taken by an authority in the exercise of its administrative functions. The Ombudsman was also competent in cases involving violations of the Code of Conduct by a political party. If someone had complained about a violation of his rights and the competent authorities had failed to act, that person could refer the matter to the Ombudsman, except in cases involving extradition or cases already pending before another State commission.

49. The CHAIRPERSON invited the delegation to reply to the questions in part II of the list of issues (CCPR/C/61/JAM/4), which read:

> "11. Right to privacy (article 17): Please provide information on the current status of legislation regarding wire-tapping and on any judicial safeguards, other than those mentioned in paragraph 106 of the report, which protect the individual from interference with his privacy (See paragraph 108 of the report).
>
> 12. Rights of the child (article 24): Please indicate what concrete measures have been taken to protect children from abuses within the family. Please elaborate on the incidence of child labour, especially in rural areas, as well as on the treatment and protection of street children.
>
> 13. Right to participate in the conduct of public affairs (article 25): When are the postponed local elections now due to take place?
>
> 14. Rights of persons belonging to minorities (article 27): Please elaborate on practical measures taken to ensure the effective enjoyment by persons belonging to religious minorities of their rights under article 27 of the Covenant.
>
> 15. Jamaican Council for Human Rights (article 2): What are the current functions of the Jamaican Council for Human Rights?"

50. Mr. RATTRAY (Jamaica), in reply to question 11, recalled the first three sentences of paragraph 108 of the report (CCPR/C/42/Add.15), adding that a committee on freedom of information had been established and was shortly to make a recommendation on the question of wire-tapping. In 1990, a ministerial paper on the subject had been presented to Parliament. That paper indicated that wire-tapping should be conducted only on an exceptional basis and should be authorized only for persons suspected of drug trafficking or activities of a terrorist or subversive nature. The authorization issued by the Attorney-General was subject to approval by the Prime Minister and was granted only for a limited period. The question of wire-tapping was not, however, a simple one, given that telephone communications were managed by a private company, a fact which raised problems as to the status of the instructions given by the State authorities concerning wire-tapping.

51. Generally speaking, the Government was very concerned about the question of wire-tapping and considered it important to have appropriate legislation, which would provide all the necessary legal guarantees, as had been done in the United Kingdom.

52. With regard to the requests made in question 12, his delegation was unfortunately unable to provide statistical data on the protection of children, but would ensure that such data were communicated to members at a later date. He assured the Committee that many activities aimed at protecting the rights of the child were under way in Jamaica.

53. In reply to question 13, he said that the local elections had been postponed because a new system for preparing registers of voters had had to be set up; the Government wanted to ensure that all persons eligible to vote were duly registered and that free, fair and democratic elections were held. The new registers were expected to be finalized by November 1997 and the local elections would be held as soon as possible thereafter, on the understanding that a general election, at the national level, would have to be held before the local elections.

54. With regard to question 14, he wondered what was meant by "persons belonging to religious minorities" in Jamaica, as no restriction was imposed on the practice of any religion whatsoever. The only case that might be mentioned in that context would perhaps be that of the Rastafarians, whose beliefs could be considered comparable to religious beliefs. That question had given rise to much debate within Jamaican society, and the Rastafarians had in particular maintained in the courts that the use of such drugs as marijuana formed part of their religious rites. The controversy continued, but the position of the Jamaican authorities was that any allegedly religious practice that endangered the security of the State and citizens must be proscribed.

55. In reply to question 15, he said that the Jamaican Council for Human Rights continued to exercise its functions in total independence and there were no restrictions on its activities, except those due to the lack of financial resources.

56. The CHAIRPERSON invited the members of the Committee to raise any additional questions they might have on part II of the list of issues.

57. Mr. YALDEN, referring to the Jamaican Council for Human Rights, said he would have liked specific information not on its status in conformity with the law but on the role it played in Jamaica and the type and number of complaints it had received, and its effectiveness in following up such complaints.

58. Mr. LALLAH noted that according to paragraphs 119 to 124 of the second periodic report, the rights enshrined in article 23 of the Covenant were guaranteed in a general fashion in the Jamaican Constitution, but it seemed that section 24 of the Jamaican Marriage Act provided for certain exceptions or restrictions that might go beyond the principles proclaimed in the Covenant. The delegation could perhaps provide further information on that point.

59. Ms. MEDINA QUIROGA, returning to the questions she had already raised with regard to article 17 of the Covenant, on respect for privacy, again asked whether the authorities planned to remove the penalties under criminal law for sexual relations in private between consenting male adults; such penalties could also raise issues regarding articles 2, 20 and 26 of the Covenant.

60. Mr. RATTRAY (Jamaica), replying to Mr. Yalden, said that the Jamaican Council for Human Rights was a private body which did not report to the Government on its activities, so that it would be difficult officially to evaluate its effectiveness. However, the Council was very active, considering the number of cases brought before it and which it had openly notified to the Government. In that regard, all the necessary statistical data would be forwarded to the Committee in due course.

61. As to Mr. Lallah's question, he regretted that he could not provide a specific reply immediately. However, he understood that a new bill on marriage, adoption and divorce was being drafted, and the desired details would be forwarded to the Committee as soon as possible.

62. With regard to respect for privacy, he understood the concerns expressed by members of the Committee, particularly as to the extent to which the legislation on homosexuality might comprise certain discriminatory aspects. Like some members of the Committee, he believed the question should indeed be considered more closely, and he would inform the Jamaican authorities accordingly.

63. The CHAIRPERSON invited the members of the Committee to make their individual comments following consideration of the second periodic report of Jamaica.

64. Lord COLVILLE said he wished to assure the delegation that the basic objective of the Committee was to contribute to the process of strengthening respect for human rights which had clearly been undertaken in Jamaica. It was therefore regrettable that there had been such a long delay since the submission of the initial report; if the Jamaican Government had told the Committee early enough of the difficulties it had been encountering in ensuring respect for certain essential human rights rules, the Committee, to the extent allowed by its resources, would have been able to provide the authorities with support and advice in order to encourage them in their

efforts. Nevertheless, it was to be hoped that the various proposed measures to improve the human rights situation in Jamaica would be duly applied and that the Committee would be informed of their practical results, without another inordinate delay before the dialogue between the Committee and the State party continued.

65. Mr. SCHEININ welcomed the fruitful dialogue that had been held with the delegation and the additional information it had provided on sensitive matters concerning, in particular, corporal punishment, conditions of detention, legal aid and the protection of citizens against abuses of authority by the police.

66. With regard to the Committee's views following its consideration of communications transmitted to it by individuals under the Optional Protocol, those communications must not be considered by the State party as mere recommendations to which it was free to give effect as it wished. In ratifying the Optional Protocol, the State party had recognized the competence of the Committee set up under article 28 of the Covenant and was consequently bound, at least morally, to give effect to the Committee's recommendations.

67. The CHAIRPERSON thanked the delegation for having replied competently and sincerely to the many questions asked by members of the Committee. As Lord Colville had pointed out, if the second periodic report of Jamaica had been submitted earlier, the Committee would have been in a better position to provide possibly useful assistance in formulating measures to give effect to the rights set forth in the Covenant. It should be stressed that submission of State party reports within the time limits set was essential in order to maintain and strengthen the Committee's dialogue with States parties.

68. The Committee had observed that there had been positive developments in Jamaica in recent years, even though some aspects of the situation still gave rise to concern, such as corporal punishment - which, in her opinion, was a remnant from a bygone era, legal aid and the conditions for imposing the death penalty. In that regard it appeared that the provisions of article 14 of the Covenant were well short of being respected in Jamaica.

69. She associated herself with members who had already expressed regret at the decision taken by the Jamaican authorities to withdraw from the Optional Protocol. However, she hoped the Committee would be able to continue its cooperation with the State party, in particular during its consideration of the third periodic report, which, it was to be hoped, would be submitted within a reasonable period.

70. Mr. RATTRAY (Jamaica) thanked the members of the Committee for having given his delegation the opportunity to hold a constructive and fruitful dialogue. He regretted the delay in submitting the second periodic report and assured members that the Jamaican authorities would do whatever was necessary to ensure that the third periodic report arrived as quickly as possible, so that the dialogue and cooperation with the Committee could be pursued. He also regretted that circumstances had forced his Government to announce its intention to withdraw from the Optional Protocol, but stressed that the Government did not thereby consider itself to have been released from its obligations under the Covenant itself or from the fundamental principles

enshrined therein. On the contrary, it earnestly hoped that the submission of its periodic reports to the Committee would remain the occasion for exchanges of views that fostered increased respect for human rights in Jamaica.

71. The CHAIRPERSON thanked the delegation and announced that the Committee had thereby concluded its consideration of the second periodic report of Jamaica.

The meeting rose at 1.05 p.m.